UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

ARAMARK SERVICES, INC. Employer and CHRISTOPHER VINSON Petitioner and HOTEL EMPLOYEES, RESTAURANT EMPLOYEES, AFL-CIO, AND ITS LOCAL 274[1] Union Involved	Case 4–RD–1901

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

[1] The name of the Union Involved appears as amended at the hearing.

4. The Employer provides food services to various companies. Since December 1, 1997, the Union Involved has been the exclusive collective-bargaining representative of the Employer's food service employees who work at Shared Medical Systems in Malvern, Pennsylvania. The parties' most recent collective-bargaining agreement was effective from December 1, 1997 to November 30, 2000. The Union Involved takes the position that the petition is invalid because the Petitioner initially filed it as a UD (deauthorization) petition, and it was not properly changed to a RD (decertification) petition. The Union Involved further contends that the petition is barred by a purported contract between the parties.

On January 22, 2001,[2] the Petitioner filed a petition accompanied by a showing of interest. On the petition form, the Petitioner checked the block indicating that it was a "UD" petition.[3] The Petitioner testified that he received a telephone call from a Board agent who asked his purpose in filing the petition. The Petitioner responded that he "wanted to see about having the Union removed from where I work." The Board agent told him that he had checked the wrong box and that the Board would correct this error.[4] The Petitioner testified that the correction was made with his permission.

By letter dated January 24, the Regional Director for Region Four informed the parties that the petition had been incorrectly marked as a UD petition instead of an RD petition, but that the petition was corrected. Attached to the letter was a corrected copy of the petition with an "X" in the "RD" block, not the "UD" block. Thereafter, by letter dated January 30, the Regional Director responded to an inquiry by the Union Involved's attorney, stating that the Board agent had contacted the Petitioner because the showing of interest suggested that the Petitioner intended to file an RD petition, not a UD petition. The letter further indicated that because the Petitioner wished to file a decertification petition, he authorized the Regional Office to place a check in the RD block on the form and delete the check in the UD block before docketing. The petition was never docketed as a UD petition, although some uncorrected copies were erroneously sent to some of the parties.

The Union Involved contends that the petition is invalid because the Petitioner did not himself alter the petition, but it was changed "by some person or persons unknown." In this regard, the Union Involved asserts that the NLRB Casehandling Manual indicates that no one but the Petitioner may change a petition. The Union Involved further contends that it did not have adequate notice before the February 1 hearing that the petition was an RD petition and therefore its attorney was unable to prepare adequately for the hearing.

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[2] All dates are in 2001 unless otherwise indicated.

[3] The Board's petition form Section 1, "Purpose of the Petition," lists and describes six different types of petitions and requests the petitioner to check a small block next to the applicable petition. The descriptions of the RD and UD petitions read:

RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) – A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) –Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

[4] The Petitioner further testified that he had accidentally failed to place a check mark in the RD block on the petition form and instead placed it in the UD block.

The Union Involved has failed to demonstrate that the Regional Office violated any Board procedure in processing the petition. The record shows that upon receipt of the petition and showing of interest, a Board agent asked the Petitioner his intentions in filing the petition. When the Petitioner expressed that he no longer wished to be represented by the Union Involved, the Region corrected and docketed the petition to reflect his intention to file an RD petition. The Regional Director's January 24 and January 30 letters clearly informed the parties of the change. NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11001.8 states that if petitions are received in the Regional Office containing errors on their face, assistance may be rendered in remedying the defects prior to docketing.[5] The Regional Office procedure in this case was consistent with this provision. Moreover, the change to an RD petition did not prejudice the Union Involved as it was notified of the change well in advance of the hearing and did not request a postponement. Therefore, I find that the petition is valid and will process it accordingly.

In late November 2000, the parties agreed that when the contract expired on November 30, they would continue its terms while they bargained for a successor agreement. The parties conducted three bargaining sessions in December 2000 and January 2001. During these negotiations, the Union was represented by Charles Murphy, a Business Agent and Vice President, and the Employer was represented by Jim Reichert, its Regional Director of Labor Relations.[6] At these sessions, the parties agreed, among other things, to the term of the new contract (three years), and to wages, health and welfare and pension fund contributions. They further agreed that the wage increases would be retroactive to November 30, 2000.

On January 18, 2001, Reichert sent the following faxed message to Murphy:

> Company will agree to Union #3 Section #6[7]- "Medical leave can be extended up to 1 year with bona fide medical evidence.
>
> Union #13[8]- Red circle employees will receive all contractual wage increases.
>
> Company proposal #2[9]- Company still holds on employees completing one year of service before receiving any personal days. Also 72-hour notice must be given.

Murphy testified that when he received this fax, he scheduled a ratification meeting with the unit employees for February 6. He further testified that the parties never incorporated the

[5] The Casehandling Manual provision cited by the Union Involved, Sec. 11014, is inapposite as it relates to amendments to petitions *after* they are docketed.

[6] The Union Involved's representatives made marginal notes on a copy of the proposals to reflect agreements with the Employer. The written notations on the document in evidence are at times barely legible and at other times entirely illegible.

[7] In this section, the Union Involved proposed extending leaves of absence for illness from six months to one year.

[8] The record does not describe this proposal.

[9] The Employer's proposals are not in evidence, and the record does not reflect to what extent the parties agreed on them.

new terms into the existing agreement to create a single document and that the Union did not sign the contract.

It is well established that, in order to constitute a bar, a contract must be in writing, signed by all parties prior to the filing of a petition, and must contain substantial terms and conditions of employment. *Appalachian Shale Products, Co.,* 121 NLRB 1160, 1161 (1958). See also *Television Station WVTV,* 250 NLRB 198 (1980). The agreement need not be embodied in a formal document. An informal document or documents, such as a written proposal and a written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient if signed. *Seton Medical Center*, 317 NLRB 87 (1995); *Appalachian Shale*, supra at 1162; *Georgia Purchasing*, *Inc*., 230 NLRB 1174 (1977). Even though the terms of the contract are to be applied retroactively, contracts signed after the filing of the petition do not serve as a bar. *Hotel Employers Association of San Francisco*, 159 NLRB 143 (1966). The burden of proving that a contract is a bar falls on the party asserting it has that effect. See *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

The Union Involved has failed to meet its burden of demonstrating that the parties reached agreement and signed a successor contract prior to January 22, 2001, the date that the petition was filed. Contrary to the Union Involved's contention, Reichert's January 18 fax to Murphy, even when read in conjunction with the previous contract, does not constitute a complete collective-bargaining agreement. While the January 18 fax indicates that the parties reached agreement on some terms, it also shows that the parties did not reach agreement on the personal days provision, and the Union Involved has not shown that it ever accepted the Employer's position on that issue. Most significantly, the parties have not signed or even initialed that document or any other document. As the Board stated in *Seton Medical Center*, supra, "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." Accordingly, I find that the agreement does not bar the petition in this case, and that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. *De Paul Adult Care Communities, Inc*., 325 NLRB 681 (1998); *Seton Medical Center*, supra. Cf. *Aramark Sports & Entertainment Services, Inc*, 327 NLRB 47 (1998).

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> **All regular full time-and part-time food services employees employed by the Employer at the Shared Medical Systems Great Valley Corporate Center facility, excluding all office clerical employees, chefs, guards and supervisors as defined in the Act.**

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,[10] subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

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LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region Four within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **March 13, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

[10] Your attention is directed of Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **March 20, 2001**.

Signed: March 6, 2001

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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